IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 616 of 2002

in

MISC.CIVIL APPLICATIONNo 812 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DR. N.P. DESAI

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 616 of 2002

MR NK MAJMUDAR for Appellant No.

MS HARSHA DEVANI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE J.R.VORA

Date of decision: 16/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Upon matter being called out, learned AGP, Ms.Harsha Devani appeared for respondents No.1 & 2. Respondent No.3 is sought to be deleted and accordingly, leave to amend cause title is granted.

Upon joint request of learned advocate Mr.Majmudar for the appellant and the learned Asstt. Government Pleader, the matter is taken up for final disposal in view of the facts and circumstances and the fact that it is a very old matter.

Learned advocate Mr.Majmudar appearing for the appellant has highlighted a few important facts and has, repeatedly, stated that he was busy in another court which resulted into his absence at the relevant time, when the matter was called out and, therefore, the matter came to be dismissed for default. The restoration application also, came to be rejected which is challenged before us in this Letters Patent Appeal under clause 15 of the Letters Patent.

After having heard the learned advocate, Mr.Majmudar, appearing for the appellant and considering the text and context of the impugned order of the learned single Judge, prima facie one would feel that there is no fit case for making a departure from the view taken by the learned single Judge. However, considering the long drawn legal battle for the rights of a medical practitioner, the same cannot be allowed to be put at naught on the ground that the learned advocates appearing for the original petitioner, appellant before us, could not remain present at the time of hearing before the learned single Judge and, that too, due to the fact that he was busy in another court. Again, upon a specific assurance given at the Bar by the learned advocate Mr.Majmudar that on a stipulated notified day, he will positively attend and argue the matter without any further delay as the matter has already passed through the long legal conduit pipe and in the larger interest of justice, bearing in mind the fact that substantial justice should not be jettisoned or sacrificed on the altar of procedural aspects, we are inclined to restore the matter dismissed for default by quashing the order of the learned single Judge.

Accordingly, the appeal shall stand allowed without any order as to costs.

(J.N.Bhatt, J.)

(J.R.Vora, J.)

(vjn)